

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of:

High-Cost Universal Service Support

WC Docket No. 05-337

Federal-State Joint Board on Universal Service

CC Docket No. 96-45

**Comments of the USA Coalition**

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## Summary

The specific requirements of the Communications Act of 1934, as amended, (the “Act”) must be the foundation for any reform of the universal service program. In this regard, the United States Court of Appeals for the Tenth Circuit twice now has directed the Federal Communications Commission to define key terms in section 254 in a manner consistent with the rest of the Act. The Tenth Circuit’s ruling makes clear that the Commission cannot lawfully implement section 254 until it has defined these key terms. To do so, the Commission must first define, in practical terms, the goals of the universal service support program.

The touchstone of the universal service program is the requirement that the Commission ensure that consumers in rural, insular and high-cost areas have access to services that are “reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” To achieve this goal, the Commission must determine the fundamental characteristics of the telecommunications and information services market in urban areas, and develop a mechanism to ensure that reasonably comparable options in terms of service types, service providers, and service rates are available in rural areas. The support provided by the universal service distribution methodology to achieve this goal must be explicit, sufficient, and technologically and competitively neutral. Any proposal that would segregate support funds based on technology or competitive status, or that interferes with or grossly distorts the functioning of a competitive communications services markets, must be rejected

Finally, as part of its reform effort, the Commission should revamp the USF audit process. Currently, too much money and effort is expended auditing USF support both by the Commission and by the carriers. The Commission should open a new docket dedicated to streamlining the audit system and developing a less wasteful oversight process.

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The Universal Service for America Coalition (“USA Coalition”),<sup>1</sup> by its attorneys, hereby submits these comments in the above-captioned proceeding in response to the Notice of Inquiry issued by the Federal Communications Commission (“FCC” or “Commission”) requesting commenters refresh the record regarding the issues raised by the United States Court of Appeals for the Tenth Circuit in the *Qwest II* decision.<sup>2</sup> The USA Coalition urges the Commission to ensure that universal service support is made available in a technologically and competitively neutral manner so that innovation can be implemented into the communications network as rapidly and efficiently as possible. Ensuring that residents and business in rural, insular, and high-cost areas have comparable choices among the services, technologies, and

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<sup>1</sup> The members of the USA Coalition include Carolina West Wireless, MTPCS, LLC d/b/a Cellular One, Corr Wireless Communications, Mobi PCS, SouthernLINC Wireless, and Thumb Cellular LLC.

<sup>2</sup> *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Inquiry, FCC 09-28 (rel. April 8, 2009).

service providers is the best means of promoting the vibrancy, robustness, and redundancy of the communications network.<sup>3</sup>

## **I. INTRODUCTION**

The USA Coalition consists of six of the nation's leading rural providers of wireless services, and is dedicated to advancing regulatory policies that will enable Americans to enjoy the full promise and potential of wireless communications, regardless of where they live and work. The Coalition seeks to ensure that our nation's universal service programs are technologically and competitively neutral, which ultimately will facilitate competition that benefits consumers.

A vibrant, robust, and redundant communications network is essential to the economic strength of the United States and the public safety of its citizens. In order to ensure the strength of the communications network in rural, insular, and high-cost areas, service must be affordable to residents of those areas. In some rural, insular, and high-cost areas, however, service will be affordable only with support from the Universal Service Fund ("USF").

Universal service support must be made available in a technologically and competitively neutral manner so that technological innovation can be implemented into the communications network as rapidly and efficiently as possible.<sup>4</sup> Favoring one type of

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<sup>3</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, ¶ 7 (Aug. 8, 1996) ("By reforming the collection and distribution of universal service funds, the states and the Commission would ensure that the goals of affordable service and access to advances services are met by means that enhance, rather than distort, competition.") (*Local Competition Order*).

<sup>4</sup> See Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996) (generally, "the Act") (explaining that the purpose of the 1996 Act is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies").

technology or class of carriers, whether explicitly or implicitly, will only slow the integration of technological innovation into the communications network and increase inefficiencies.<sup>5</sup> The USA Coalition believes that allowing residents and businesses in rural, insular, and high-cost areas to select the services, technologies, and service providers of their choice is the best means for ensuring the vibrancy, robustness, and redundancy of the communications network.

Support also must be allocated and distributed in the manner that best facilitates the universal availability of affordable services. Consumers want, and need, the ability to choose among various types of affordable services, service providers, and technologies. The support distribution methodology should neither encourage nor require any carrier to become more inefficient, or to comply with unnecessarily burdensome requirements, merely to receive universal service support. At a minimum, mandated inefficiency increases the cost of providing service, which will cause the fund to grow unnecessarily. In a worst case scenario, carriers would choose to forgo support and not offer service, which would limit the options available to consumers in rural, insular, and high cost areas where support is necessary to ensure the availability of affordable services.

## **II. USF REFORM SHOULD FOCUS ON THE CONSUMER AS THE BENEFICIARIES OF THE SUPPORT RATHER THAN ON THE CARRIERS AS THE RECIPIENTS OF THE SUPPORT**

The language of section 254 makes clear that the overarching purpose of the universal service program is to improve access to telecommunications and information services for consumers living in rural areas. This goal requires the Commission to focus primarily upon

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<sup>5</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 FCC Rcd 15499, ¶ 7 (Aug. 8, 1996) (“By reforming the collection and distribution of universal service funds, the states and the Commission would ensure that the goals of affordable service and access to advances services are met by means that enhance, rather than distort, competition.”) (*Local Competition Order*).

the consumer, rather than upon the service provider.<sup>6</sup> As such, any reform effort should seek to shift the emphasis of the USF program away from distinctions between incumbent LECs and competitive ETCs and towards a new regime designed to ensure the availability and affordability of a variety of service types and service providers for consumers living in rural, insular, and high-cost areas.

To achieve this goal, the universal service distribution mechanism should seek to ensure that consumers have access to a competitive communications market in which consumers can choose the provider from which they wish to receive service. As such, USF reforms should minimize the distribution mechanism's interference with market forces while creating incentives for all ETCs (incumbent and competitor alike) to provide advanced services (including mobility and broadband) or lower prices for customers in rural areas. Although any government intervention in the communications market invariably creates some market distortion, the intervention should be limited to the amount necessary to achieve specific statutory goals described in the Act. When support is limited to specific carriers based on artificial distinctions such as regulatory status or technological platform, market distortions are magnified rather than minimized, and consumers have fewer service options and face higher prices. Thus, to best serve consumers, the Commission should reject policies that would deny support for any particular carrier (*e.g.*, wireless carriers or broadband service providers) based on regulatory status or technological platform. The Commission should be particularly wary of denying competitive

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<sup>6</sup> See *Alenco Commc'ns v. FCC*, 201 F.3d 608, 620 (5<sup>th</sup> Cir. 2000) ("The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers.").

carriers access to funds, particularly since wireless services provided by competitive carriers have become increasingly important to consumers in recent years.<sup>7</sup>

**III. ANY REFORM EFFORT MUST RECOGNIZE AND ADDRESS THE DIFFERENCES BETWEEN URBAN AND RURAL AREAS WITH RESPECT TO COST AND POTENTIAL SUBSCRIBER DENSITY**

In a free market, carriers have incentives to make rational decisions regarding the regions they service, the services they offer, and the rates they charge. When an area within the United States remains unserved or underserved, it is generally because providers have made the assessment that cost per potential subscriber is simply too high to be recovered from the customers in that region. This high cost per potential subscriber may result from a small base population, the distribution of the population within the region, or the geographic features of the region. Regardless of the exact reason, carriers will not make service available to customers in that region without some type of government intervention, such as universal service support.

Universal service support should be used to address the market failures that lead to a lack of service options or unacceptably high prices in rural, insular, and high-cost communities. Support in these areas should address the market failures so that consumers have the opportunity to enjoy the benefits of competition even though they live and work in an area where a competitive market would not develop in the absence of support.

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<sup>7</sup> Mobility and broadband services are also requirements for strong economic growth. See Roger Enter, *The Increasingly Important Impact of Wireless Broadband Technology and Services on the U.S. Economy*, 3 (2008) available at [http://graphics8.nytimes.com/packages/pdf/technology/20080521\\_Ovum\\_EconomicImpactReport.pdf](http://graphics8.nytimes.com/packages/pdf/technology/20080521_Ovum_EconomicImpactReport.pdf); see also Stephen J. Blumberg and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, CDC, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, June-July 2008*, available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200905.pdf> (noting that one in every five households relies solely upon wireless services).



Support distribution mechanisms that foster a competitive market will reduce the total amount of support necessary over time even if fostering a competitive market may result in the distribution of higher support amounts in the initial years. By contrast, mechanisms that provide support for only one, or even two, carriers artificially insulate those carriers from market forces that would have required them to become more efficient over time. Without the discipline of the market to force support recipients to become more efficient over time, the supported carriers will be less likely to wean themselves from support and thus the fund likely will distribute more total support over time than it would have if competition from multiple providers forced every provider to be as efficient as possible. For this reason, to the extent that the Commission determines that support is necessary within an area, all eligible carriers serving the area should be entitled to support, regardless of the carrier's regulatory status or technology platform.

**IV. THE COMMISSION MUST ESTABLISH CLEAR, OBJECTIVE, AND MEASURABLE GOALS AS PART OF ITS REFORM EFFORTS**

The Commission cannot adequately consider any reform proposals until it has adopted objective and measurable goals for universal service support that are consistent with the Act and the Commission's universal service principles. As a first step, the Commission must comply with the Tenth Circuit's order in *Qwest II* and adopt definitions for several key concepts contained in the principles governing the universal service program, among the most important of which are the concepts of "reasonable comparability," "affordability," and "sufficiency."<sup>8</sup>

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<sup>8</sup> Found in 47 U.S.C. § 254(b)(3), 47 U.S.C. § 254(b)(1), and 47 U.S.C. § 254(b)(5) respectively. See *Qwest Commc'ns Intl'l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (*Qwest II*) (remanding *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, FNPRM, and Mem. Opinion and Order, 18 FCC Rcd 22559 (2003) (*Order on Remand*)).

Then, the agency must establish clear goals based on the clarified definition of the universal service principles, ensuring that such goals are specific enough that success or failure in achieving them is transparent and objectively measurable. These goals must be based directly upon the statutory standards and record evidence about services available to consumers in both urban and rural markets.

A. **The Principle Of “Reasonable Comparability” Should Remain The Focus Of The Universal Service Program**

Section 254(e) requires that the Commission ensure that USF support be “explicit and sufficient to achieve the purposes of [the universal service provisions of the Act].” In *Qwest II*, the Tenth Circuit rejected the Commission’s definition of the term “sufficient” in the *Order on Remand* because the Commission had focused exclusively upon the principle of “reasonable comparability” enumerated in section 254(b)(3) and ignored the other principles in section 254(b).<sup>9</sup> Based on the Tenth Circuit’s order, for any new reform effort to survive judicial review, the Commission must explicitly consider all of the principles enumerated in section 254(b) as part of its efforts to define what constitutes “sufficient” support within the meaning of the statute.

Despite the Tenth Circuit’s rebuke, the Commission should continue to recognize that the principle of “reasonable comparability” set forth in section 254(b)(3) is the cornerstone of the universal service program.<sup>10</sup> Although the Commission must consider all of the principles enumerated in section 254 in developing the goals for the universal service program, the

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<sup>9</sup> *Id.*

<sup>10</sup> 47 U.S.C. § 254(b)(3). The Commission has found that “section 254(b)(3) reflects a legislative judgment that all Americans, regardless of income, should have access to the network at reasonably comparable rates.” *Federal State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice Of Proposed Rulemaking, 20 FCC Rcd 9731, 19736-37, ¶ 10 (2005).

Commission should nevertheless afford the greatest weight to the principle of “reasonable comparability” because the other principles either lack a strong nexus to ensuring access to communications services in high-cost areas or do not provide clarity as to the scope of the Act’s requirements.<sup>11</sup> For instance, section 254(b)(1) requires the Commission to consider whether “quality services are available at just, reasonable, and affordable rates.”<sup>12</sup> However, the Act provides no basis for determining what constitutes a “just” or “reasonable” rate, and attempting to base support on a definition of “affordability” is fraught with difficulty. Indeed, attempting to determine “affordability” based on consumer expenditure data and/or household income data (as some parties have proposed)<sup>13</sup> would require a complex analysis that would target support no more accurately than the current mechanism. Ultimately, the Commission can best serve the principle of “affordability” by defining rates that are “reasonable comparable” to urban rates as “affordable,” and then continuing to handle individual cases of need through the Lifeline and Link-Up programs. Such a finding does not conflict with the Commission’s requirements to “consider fully the Act’s principles,” as long as the Commission makes clear the reasons for its decision.<sup>14</sup>

The remaining principles are consistent with the primary principle of “reasonable comparability.” Section 254(b)(2) requires the Commission to encourage the availability of “advanced telecommunications and information services” throughout the Nation – a principle

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<sup>11</sup> In both *Qwest I* and *Qwest II*, the Court explicitly recognized that “[T]he FCC may exercise its discretion to balance the principles against one another.” *Qwest II*, 398 F.3d at 1233-34 (quoting *Qwest I*, 258 F.3d at 1202).

<sup>12</sup> 47 U.S.C. § 254(b)(1) “Quality and rates: Quality services should be available at just and reasonable rates.”).

<sup>13</sup> See, e.g., Comments of AT&T, CC Docket No. 96-45, 23-32 (filed March 27, 2006); Comments of Qwest Commc’ns Int’l, Inc., CC Docket No. 96-45, 22-29 (filed Mar. 27, 2006).

<sup>14</sup> *Qwest II*, 398 F.3d 1234.

almost directly reiterated in section 254(b)(3)’s “reasonable comparability language.”<sup>15</sup> Section 254(b)(4), in turn, is not concerned with distribution, but instead focuses solely on USF contributions, and is irrelevant to the *Qwest II* remand order. Section 254(b)(5) requires that support be “specific, predictable, and sufficient,” but fails to provide any basis for how to interpret those terms. Finally, section 254(b)(6) requires the Commission to improve access for various public institutions, but does not include any metrics and does not provide any guidance for how to achieve the other aspects of the universal service program.

In light of the structure and goals of the Act, the principle of “reasonable comparability” provides the surest guide for the administration of the universal service program. In order to best serve the needs of consumers living in rural, insular, and high-cost areas, the Commission should define “reasonable comparability” to require that the choices available to consumers in rural, insular, and high-cost regions of the United States be “reasonably comparable” to those available in urban areas with respect to the following factors: (1) the types of telecommunications and information services offered by service providers in an area; (2) the extent of a consumer’s ability to choose among multiple service providers in obtaining telecommunications and information services; and (3) the rates charged for telecommunications and information services in those areas. Specifically, the FCC should take the following steps to ensure “reasonable comparability” with respect to these factors:

- **Service types** – the FCC should conduct surveys to determine the types of services available in urban areas (*e.g.*, voice, mobility, broadband, text messaging, etc.) and seek to ensure that rural consumers have access to equivalent services. To the extent that a rural area lacks access to services that are reasonably

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<sup>15</sup> Compare 47 U.S.C. § 254(b)(2) (“Access to advanced telecommunications and information services should be provided in all regions of the Nation.”) with 47 U.S.C. § 254(b)(3) (“Consumers in all regions of the Nation ... should have access to ... advanced telecommunications and information services...reasonably comparable to those services provided in urban areas”).

comparable to those found in urban areas, the area should be considered underserved and ETCs serving that area should be eligible to receive USF support.

- **Service providers** – the FCC should ensure that rural consumers have the ability to choose among service providers. To the extent that a rural area lacks access to a number of service providers that is reasonably comparable to those found in urban areas, the area should be considered underserved and ETCs servicing that area should be eligible to receive USF support. The Commission must ensure that the benchmark it establishes for competition in rural areas is “reasonably comparable” to the competition existing in urban areas in order to ensure that rural consumers can benefit from competition in the same manner as urban consumers.<sup>16</sup>
- **Service rates/costs**<sup>17</sup> – the FCC should conduct surveys to determine the average rates/costs for supported services in urban areas by state, and then define rates/costs within 125% of this average level as “reasonably comparable” to urban rates. By relying on a flat percentage, as proposed by the Vermont and Maine public service entities, rather than on a standard deviation, the Commission ensures that statistical anomalies do not result in areas that need support being denied it or areas not in need of support receiving funding based solely upon where an area’s rates/costs fall in a national percentile.<sup>18</sup>

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<sup>16</sup> The FCC’s most recent data demonstrates that consumers in urban areas have access to one carrier of last resort and, at the very least, two other carriers all providing telecommunications service. With respect to wireless services, 95.5% of the U.S. population has access to three or more wireless service providers. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services*, Twelfth Report, FCC 08-28, ¶ 38 (rel. Feb. 4, 2008)(2008 CMRS Report).

<sup>17</sup> The goal of the program should be to ensure that the rates consumers pay in rural, insular and high-cost areas are reasonably comparable to the rates consumers pay in urban areas. Due to the complexity of comparing rates, particularly when the rates may be influenced by current USF support, it may be necessary in some or all cases to rely upon the cost to serve consumers based upon the assumption that where costs are not reasonably comparable, rates likely will not be reasonably comparable.

<sup>18</sup> See Comments of Vermont Public Service Board, Vermont Dept. of Public Service, and Maine PUC, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337 (filed Mar. 27, 2006) (explaining that defining a “reasonably comparability” benchmark in terms of standard deviations is not necessarily superior or more scientific method, as it results in a nearly constant failure rate, without regards to the actual distribution of rates throughout the country).

Support should be deemed “sufficient,” as the term is used in section 254(e) and in section 254(b)(5), when there is enough USF support available to ensure the three “reasonable comparability” standards enumerated above are met throughout the country.

**B. USF Support Must Be Made Available In A Specific And Predictable Manner**

Section 254(b)(5) requires that support mechanisms be “specific and predictable.” To meet the requirement that support be specific, the Commission should continue to move away from the implicit subsidies contained in the current intercarrier compensation system.<sup>19</sup> Instead, the Commission should take steps to ensure that adequate support is available through the USF program, and that all carriers in regions where USF support is necessary to provide consumers with “reasonably comparable” service have access to such support. To the extent that the achievement of this goal requires the Commission to reduce permissible access charge levels, the Commission should continue to pursue that objective in the appropriate intercarrier compensation dockets.

In order to meet the requirement that support be “predictable,” the Commission must ensure that eligible telecommunications carriers (“ETCs”) have adequate information regarding the amount of universal service support they will receive so that they can make rational investment decisions. The current cap on competitive ETC support violates this

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<sup>19</sup> *High Cost Universal Service Support*, WC Docket No. 05-337; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109; *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Numbering Resource Optimization*, CC Docket No. 99-200; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *IP-Enabled Services*, WC Docket No. 04-36, Order on Remand & Report & Order & FNPRM, FCC 08-238, ¶ 173 (rel. Nov. 5, 2008) (recognizing Congress's direction that universal service support should be “explicit,” and that the Commission should move away from including non-traffic sensitive charges in its intercarrier compensation regime) (*ISP Order on Remand*).

principle, because the amount of support provided to each carrier varies based upon the total amount of money requested by competitive ETCs within each state, with each carrier receiving only a percentage of its entitlement based on the ratio of the capped funds available within the state to the total amount requested within the state.<sup>20</sup> Importantly, this ratio is not ascertainable until the end of the year, making it impossible for carriers to determine the amount of USF support they will receive.

In undertaking reform, the Commission also should reject calls to impose expensive and burdensome cost study requirements upon ETCs. Imposing such a requirement upon the wide variety of carriers and technologies in today's marketplace will require a massive bureaucratic effort to support the implementation, review, and dispute resolution process, increasing the administrative overhead of the USF. Furthermore, the adoption of a cost study requirement would increase the cost of serving rural, high cost, and insular areas for carriers, and thus increase the amount of support that these carriers would need to achieve the Act's goals. Such a requirement also would increase the probability that carriers might choose to not participate in the USF program at all, and instead simply forgo the opportunity to provide service in a high-cost area. This harms consumers in those areas by decreasing competition and service options. Instead, the Commission should retain the identical support rule, or failing that, develop a new method for distributing support to competitive ETCs either through a new forward-looking cost model or by developing an easily auditable means of reporting a clear list of reimbursable costs.

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<sup>20</sup> *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-46, Order, 23 FCC Rcd 8834, 8847, ¶ 27 (rel. May 1, 2008) (*Interim Cap Order*).

**C. USF Support Must Be Distributed In A Competitively Neutral Manner**

Competitive and technological neutrality promotes the affordability of communications services by encouraging the growth of a competitive market for communications services in rural, insular, and high-cost areas. Failure to provide support in a competitively neutral manner encourages monopolistic practices and results in higher rates for rural consumers. Indeed, the principle of competitive neutrality is mandated by Commission precedent, and it is fundamental to ensuring that the market, and not local or federal government regulators, determines which carriers shall compete for and deliver services to customers.<sup>21</sup>

To ensure competitive neutrality, the Commission should adopt policies that neither favor nor disfavor carriers based on their regulatory status or technological platform. Indeed, to the greatest extent possible, the Commission should apply the same rules and funding mechanism to all carriers eligible to receive USF support within a given region. To the extent that any particular technological platform or type of carrier is capable of providing USF supported services at costs lower than another carrier in the same region, such efficiency should be encouraged, and not disincentivised through a reduction in the amount of USF support available to the more efficient carrier. Ultimately, such efficiencies will be passed through to consumers in the form of lower rates or expanded services as the efficient carrier seeks to expand its market share. Similarly, USF support should not be limited to a set number of ETCs in a given region, as this will reduce competition and, therefore, the benefits that consumers can reap

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<sup>21</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, ¶ 47 (1997) (*First Report & Order*). The Commission added this principle based upon its finding that competitive and technological neutrality in the distribution of universal service funds is consistent with congressional intent and necessary to promote “a pro-competitive, de-regulatory national policy framework.” See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87 at ¶ 23 (1996) (Joint Explanatory Statement) (cited in *First Report & Order*, 12 FCC Rcd at 8802, ¶ 48).



from competition. Instead, the USF support mechanism should be structured in such a way that the market, and not USF regulators, determines the number of competitors in each region.

V. **THE COMMISSION SHOULD REJECT ALL PROPOSALS THAT WOULD DISADVANTAGE COMPETITIVE CARRIERS**

The Commission should reject both the Qwest proposal and the Embarq proposal, each of which impermissibly limits support to non-incumbent LECs, thereby skewing the telecommunications and information services marketplace and hurting consumers. In its proposal, Qwest seeks to revise the current non-rural high-cost support mechanism to provide USF support to an incumbent LEC in any wire center where costs are over 125% of the national average. However, Qwest specifically excludes competitive ETCs from receiving any of the increased funding, and operates under the assumption that support to competitive ETCs will remain frozen.<sup>22</sup> Stripped down, Qwest essentially proposes providing an additional \$1.2 billion increase in funding to incumbent LECs (*i.e.*, more than one-third funding increase) while denying any increase in funding to the ILECs' competitors.<sup>23</sup> This would greatly disadvantage competitive carriers, and ultimately result in higher rates and fewer service options for consumers. For this same reason, Qwest's proposal is fundamentally inconsistent with the requirements of the Act.

Embarq's proposal would similarly skew markets. The Embarq proposal limits USF support to an incumbent LEC and a single competitive ETC in each study area, and requires

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<sup>22</sup> See Qwest's Proposal for Implementing the Tenth Circuit's Remand in Qwest II, *Federal State Joint Board on Universal Service, High Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, 22 (filed May 6, 2008).

<sup>23</sup> *Id.* One third funding increase based on projected 2008 calculations. See Testimony of S. Derek Turner, Research Director for Free Press, before the United State House of Representatives Committee on Energy, and Commerce Subcommittee on Communications, Technology, and the Internet, Regarding Universal Service: Reforming the High-Cost Fund, at Fig. 6 (March 12, 2009).

any carrier receiving USF support to provide 1.5 Mbps internet access as part of its service offerings.<sup>24</sup> Under this proposal, a competitive wireline carrier or a wireless carrier might receive funding (although the proposed minimum data transfer rates are set at such high levels that wireless carriers are practically excluded from eligibility), but the market in all areas receiving USF support would still become a virtual duopoly, as none of the other carriers could compete with the subsidized prices of the two carriers receiving USF support. Wireless services would be particularly hurt as the plan is premised on denying wireless carriers access to certain USF support funds in order to avoid an increase in the size of the fund.<sup>25</sup> Thus, like the Qwest proposal, the Embarq proposal also skews the market, potentially increasing prices for consumers and decreasing choice among service options and service providers. Also, like the Qwest proposal, the Embarq proposal is inconsistent with the Act.

**VI. NEITHER THE JOINT STATE PROPOSAL NOR THE COSTQUEST PROPOSAL REPRESENTS A COMPREHENSIVE OR VIABLE REFORM PROPOSAL**

Both the proposal from a group of public service entities in Vermont and Maine (hereinafter, the “Joint State Proposal”)<sup>26</sup> and the filing by CostQuest<sup>27</sup> raise interesting ideas for USF reform. However, neither represents a comprehensive or viable reform proposal at this time.

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<sup>24</sup> Embarq’s Broadband and Carrier-of-Last Resort Support Solution, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337, 5 (filed Sep. 18, 2008)

<sup>25</sup> *Id.* at 36.

<sup>26</sup> Comments of Vermont PSB, Vermont DPS, and Maine PUC, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337 (filed Mar. 27, 2006) (“Joint State Proposal”).

<sup>27</sup> Comments of CostQuest Associates – Advanced Services Model, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337 (filed Nov. 26, 2008).

The Joint State Proposal should be rejected because it would encourage inefficiency. Specifically, the Joint State Proposal contains a formula for determining “reasonable comparability” that would require the FCC to calculate a “Net Subscriber Cost” value by dividing a carrier’s costs (minus non-end user revenues) by the number of switched lines the carrier serves.<sup>28</sup> Because the denominator in this formula is based on the number of customers served by an individual carrier (as opposed to a more generalized number based on the region in which the carrier is requesting support), carriers that inefficiently serve a few customers in a region could end up receiving greater support than a more efficient carrier serving a greater number of customers. This essentially rewards inefficient carriers and carriers that artificially increase their own costs. As such, although the Joint State Proposal raises some interesting ideas, the Net Subscriber Cost concept that underlies the entire proposal must be rethought.

The Advanced Services Model whitepaper placed in the record by CostQuest does not represent a complete USF reform proposal, as CostQuest itself explains. Rather, CostQuest’s whitepaper provides a framework for the development of a cost model, including the key design criteria for the model, the technologies to be modeled, the geographic parameters, and the inputs required.<sup>29</sup> Furthermore, as CostQuest explains, a cost model could provide the underlying data for a universal service support distribution mechanism, but a cost model is not itself a distribution mechanism. The USA Coalition has no reason to doubt the claims by CostQuest that a new and effective cost model can now be developed. However, the Commission must first

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<sup>28</sup> Joint State Proposal at 27. According to the Joint State Proposal, support would be available to any carrier whose Net Subscriber Cost was more than 125% of the nationwide urban net subscriber cost.

<sup>29</sup> CostQuest Advanced Services Model at 48-53.

respond to the *Qwest II* remand and adopt a distribution mechanism that is consistent with the Act before determining whether a new cost model should be developed to support that mechanism.

**VII. AS PART OF ANY REFORM EFFORT, THE COMMISSION SHOULD REVAMP THE USF AUDIT PROCESS**

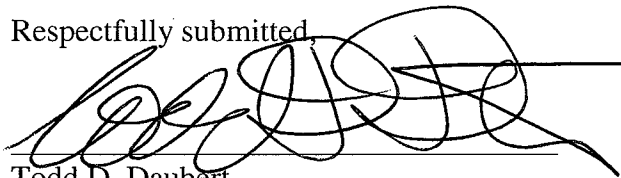
Currently, a USF audit is a mini-disaster for even the most well run and meticulous USF recipient, and it requires significant man-hours and legal expenses in order to navigate the process successfully. Meanwhile, the burden on the Commission is no less onerous; the OIG has been forced to spend nearly \$165 million in audits – money that could be better used providing services to consumers in rural, insular, and high-cost areas. As part of its reform process, the Commission should modify the USF mechanism to reduce the record-keeping burdens placed on carriers and minimize the invasiveness of a USF-distribution audit.

To achieve this, the Commission should open a proceeding for the purpose of standardizing USF distribution audits and reducing the burden placed on carriers and auditors alike. As a bi-partisan letter to the House Appropriations’ financial service subcommittee indicated, the OIG must consider “more reasonable and cost-effective cost oversight approaches” in auditing the USF program, including a switch to less invasive types of audits. Indeed, audit requirements should be invasive only to the extent absolutely necessary to allow USAC to adequately oversee fund distribution.

### VIII. CONCLUSION

Consistent with the recommendations set forth above, the USA Coalition urges the Commission to ensure that universal service support is made available in a technologically and competitively neutral manner so that innovation can be implemented into the communications network as rapidly and efficiently as possible.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Todd D. Daubert", written over a horizontal line.

Todd D. Daubert

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